Economic Impact Analysis
Virginia Department of Planning and Budget

6 VAC 20-210 – Regulation Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries

Department of Criminal Justice Services

September 5, 2003

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.G of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The General Assembly requires in Chapters 753 and 773 of the 2002 Acts of Assembly the taking of a saliva or tissue sample for DNA analysis following an arrest for a violent felony and a certain types of burglary. The DNA analysis is to be performed by the Division of Forensic Science or another entity designated by it. The identification characteristics of the profile resulting from the DNA analysis are to be stored and maintained by the Division of Forensic Science in a DNA data bank and are to be made available to federal, state, and local law-enforcement officers upon request as part of an official investigation of any criminal offense. If the charge for which the tissue or saliva sample was taken is dismissed or the defendant is acquitted at trial, the Division of Forensic Science is to destroy the sample and all records relating to the sample. §9.1-102 of the Code of Virginia authorizes the Department of Criminal

Justice Services to adopt regulations for any provisions of the Code as they relate to the responsibilities of the Division of Forensic Science.

The proposed regulation establishes when a tissue or saliva sample is to be collected, where and how the sample is to be collected, sealing and labeling requirements once the sample has been collected, procedure for transporting the sample to the Division of Forensic Science, and requirements regarding the notification of final disposition of criminal proceedings to the Division of Forensic Science. An emergency regulation to this effect has been in place since January 1, 2003. Prior to this date, DNA samples were only collected from felons (violent and non-violent) once they were convicted.

Estimated Economic Impact

The Code of Virginia requires the collection of tissue or saliva samples from individuals arrested for committing violent felonies and certain types of burglaries. The proposed regulation establishes procedures and guidelines for collecting, handling, storing, and transporting tissue or saliva samples for qualifying offenses to the Division of Forensic Science (DFS). The proposed regulation also establishes guidelines for notification to DFS of final disposition of criminal proceeding. In cases when charges against the defendant are dropped or reduced or the defendant is acquitted, DFS is required to destroy the sample and all records relating to it.

For qualifying offenses (all violent felonies and certain types of burglaries), the regulation establishes that saliva or tissue samples are to be taken at the time of arrest following a query to the DNA sample tracking application to check if there is a DNA sample of the arrestee already in the data bank. Following a determination that the arrestee is not already in the system, a tissue or saliva sample is to be collected during booking by the sheriff's office, police department, or regional jail responsible for booking upon arrest. The samples are to be collected using buccal sample kits provided by DFS and in accordance with instructions enclosed in the kit. All samples so collected are to be sealed in tamper resistant containers along with identifying information specified in the regulation, such as the arrestee's name, social security number, date of birth, the name of the person collecting the sample(s), and the date and place of collection. If a buccal sample kit is unavailable, tissue or saliva samples are to be collected using sterile swabs and are to be sealed and labeled in the same manner as the buccal sample kits. The samples are to be transported to DFS in sealed containers (by mail or in person) no later than 15

days after collection and are required to include a copy of the arrest warrant. A timely submission of the final disposition of the criminal proceedings to the Central Criminal Records Exchange is to serve as notification to DFS. Notification of the final disposition will determine whether DFS saves the defendant's DNA profile permanently to the DNA data bank or destroys it.

Prior to the adoption of an emergency regulation to this effect on January 1, 2003, DNA samples had been collected from all felons (violent and non-violent) once they were convicted of the felony. Following January 1, 2003, tissue or saliva samples are to be collected from qualifying offenders at the time of arrest (as long as the offender is not already in the data bank). The proposed change is likely to produce economic costs and benefits for the Commonwealth.

Costs: Requiring DNA samples at the time of arrest rather than at the time of conviction is likely to impose additional costs on DFS and on localities. DNA now has to be collected and a profile generated of individuals who might subsequently be acquitted or have the charges against them dropped or reduced. Buccal sample kits for taking saliva and/or tissue samples are provided by DFS to the localities free of charge. Each buccal sample kit costs DFS $4.25. DFS will also incur additional costs in producing DNA profiles for individuals arrested for qualifying offenses who might not eventually be convicted of that offense. According to DFS, it costs the division approximately $50 to produce a DNA profile[1]. DFS will also incur some additional costs in maintaining and updating the arrestee DNA data bank. However, the Department of Criminal Justice Services (DCJS) does not believe this to be a significant additional cost as DFS already maintains and updates the DNA data bank for convicted felons. Finally, localities are also likely to incur additional costs in collecting, sealing, labeling, storing, and transporting tissue or saliva samples for individuals who are arrested but not convicted of the charges against them.

According to DCJS, currently localities bill individuals convicted of a felony $25, of which $12.50 is to cover the cost incurred by the locality in collecting, handling, storing, and transporting the tissue or saliva samples and $12.50 is put into the general fund. However, individuals charged with a crime but never convicted are not charged a fee to cover the cost associated with collecting DNA samples and producing a profile. In cases when charges against

[1] The estimate is based on what private companies charge to produce a DNA profile.

the individual are dropped or reduced or the individual is acquitted, the cost of collecting, handling transporting, and analyzing the DNA samples are borne by the localities and the state.

Since the arrestee DNA data bank was created, DFS has analyzed 5,416 samples (as of the end of August). Of the samples analyzed, 1,645 (or approximately 30% of the samples collected) have since been removed from the system and their records destroyed[2]. Extrapolating from these figures, DFS can expect to analyze 8,124 arrestee DNA samples in a year, of which 2,468 are likely to be subsequently expunged from the system. Assuming that it costs DFS $4.25 to supply buccal sample kits to localities and $50 to produce a DNA profile, the division is likely to incur additional costs of approximately $134,000 per year.

Localities will also incur additional costs of collecting, handling, storing, and transporting the DNA samples of individuals who are subsequently acquitted or against whom charges are dropped or reduced. Based on the above calculations, the localities would have to collect DNA samples from 2,468 individuals in a given year who are eventually not convicted of the offense with which they are charged. As these individuals are never convicted of the offense, they are not charged the $25 fee charged to convicted felons to meet the cost of collecting and analyzing DNA samples. The cost of collecting, handling, storing, and transporting the samples will have to be met by the localities themselves. A precise estimate of the cost is not available at this time.

Benefits: The use of DNA profiling provides law enforcement with another tool for solving crimes. DNA databanks are currently being compiled and used by several countries other than the United States, including the United Kingdom, Australia, and Canada. In the United States, all 50 states have DNA database laws. In 2000, all 50 states had laws covering offenders convicted of sex offenses and more than half also had laws covering individuals convicted of other violent crimes such as murder, manslaughter, arson, kidnapping, and robbery[3]. Prior to January 1, 2003, Virginia collected samples and produced DNA profiles of all convicted felons, violent and non-violent. The profiles were stored in a DNA data bank. Between 1990 (when the data bank was created) and 2002, it has provided law enforcement agencies with 1,039 hits. A hit occurs when DNA analysis of a crime scene sample with no suspects matches a profile in the database of previously convicted offenders or a database of other crime scene

[2] 957 had the charges against them dismissed, 505 were found guilty of a lesser non-qualifying charge, 159 were found to have been charged with non-qualifying offenses, and 24 were acquitted.
[3] Congressional Statement by the Federal Bureau of Investigation on Forensic DNA Analysis, March 23, 2000

profiles. The number of hits per year has increased as the size of the database has increased and the use of DNA in forensics has proliferated. In 2000 the data bank provided 178 hits, in 2001 it provided 308 hits, and in 2002 it provided 445 hits. Following the adoption of the emergency regulation in January 1, 2003, an arrestee DNA data bank was created containing the DNA profiles of all individuals arrested for committing qualifying offenses. Since then there have been 357 hits (a hit is now defined as when DNA analysis of a crime scene sample with no suspects matches a profile in the database of previously convicted offenders, a database of other crime scene profiles, or a database of samples from those individuals arrested for specified crimes). Thus, in addition to the existing DNA data bank, the arrestee DNA data bank can now be used by law enforcement to aid in solving crimes, both unsolved cold cases and new crimes.

The primary advantage of the change in policy is that DNA information is available earlier for comparison. Rather than waiting until conviction for that information to be available, law enforcement agencies will have the DNA profile available following the arrest of the individual. Moreover, the DNA profile of individuals against whom charges are eventually dropped or reduced or who are eventually acquitted will be available for comparison until such time as the charges are dropped or reduced or the individual is acquitted. Thus, even if the individual is never convicted of the crime for which the DNA sample was collected, their DNA profile can be compared against DNA evidence from crime scenes while they await adjudication. According to DFS, the arrestee DNA data bank has yielded 36 hits since it was created on January 1, 2003 (9 for rape and sexual assault cases and 4 for homicide cases). Under previous policy, some of these DNA profiles would not have been available for comparison until the individual had been convicted of the crime and some profiles would never have entered the system as charges against these individuals were dropped or reduced or they were acquitted.

Thus, requiring DNA samples to be collected at the time of arrest rather than at the time of conviction is likely to produce some economic benefits. Some crimes may be solved sooner than they would have been otherwise. Moreover, some crimes may now be solved that might have remained unsolved or would require a lot more resources in order to solve.

The net economic impact of the proposed change will depend on whether the additional cost imposed by the policy change is outweighed by its benefits. The change is likely to cost DFS an additional $134,000 a year. An exact estimate of the cost to localities is not known.

Benefits are likely to arise out of more crimes being solved and more crimes being solved expediently. However, while the arrestee DNA data bank produced 36 hits in the year to date, an exact estimate of the number of crimes solved and the number of crimes prevented is not known.

Businesses and Entities Affected

The proposed regulation will affect all individuals arrested for qualifying offenses (violent felonies and certain types of burglaries). Arrestees who are eventually convicted of the crime will now have to submit a DNA sample at the time of arrest rather than at the time of conviction. Arrestees who are not eventually convicted of the crime with which they are charged will be required to submit DNA samples at the time of arrest. If the charges are dropped or reduced or if the individual is acquitted, the samples and all records relating to it are destroyed. However, until that time, the arrestee's DNA profile will be available to law enforcement agencies to compare against DNA evidence found at crime scenes. Between January 1, 2003 and August 31, 2003, 5,416 individuals were arrested and had their DNA samples collected and sent for analysis. DNA samples and records for 1,645 of these arrestees were then expunged.

Localities Particularly Affected

The proposed regulation will affect all localities in the Commonwealth. Localities will now be required to collect tissue or saliva samples from all individuals arrested for violent felonies and certain types of burglaries. Under previous policy, DNA samples would be collected only from those individuals who were convicted of these violent felonies and burglaries. Between January 1, 2003 and August 31, 2003, 5,416 were arrested for these crimes and had their DNA samples taken and sent for analysis. Of these, 1,645 were subsequently removed from the data bank as charges against most of the 1,645 were dropped or reduced or the individual was acquitted. Localities would have to bear the cost of collecting, handling, storing, and transporting the DNA samples of individuals who are arrested but not convicted of the crime with which they are charged. A precise estimate of the cost incurred by localities in collecting, handling, storing, and transporting the DNA samples is not available at this time.

Projected Impact on Employment

The proposed regulation is not likely to have a significant impact on employment. While DFS has been authorized to create 10 unfunded positions to handle the additional analysis, the overall impact of the change on employment in Virginia is not likely to be significant.

Effects on the Use and Value of Private Property

The proposed regulation is likely to lead to more crimes being solved and more crimes being solved expediently in Virginia. To the extent that this improves public safety by creating a safer environment and acting as a deterrent, it is likely to have a positive effect on the use and value of private property. For example, more crimes being solved and fewer crimes being committed are likely to have a positive effect on property values.